STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of WOOD, Minor.

UNPUBLISHED
August 12, 2014

Nos. 320185; 320273
Calhoun Circuit Court
Family Division
LC No. 2012-003296-NA

Before: RONAYNE KRAUSE, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

In docket nos. 320185 and 320273, respondent father and mother respectively appeal as of right the order terminating their parental rights to the minor child. Respondents' parental rights were terminated under MCL 712A.19b(3)(c)(*i*) (conditions of adjudication continue to exist), MCL 712A.19b(3)(c)(*ii*) (other conditions continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to parent's home). In docket no. 320185 we affirm the statutory basis for termination and remand as to the trial court's best interests finding. In docket no. 320273 we affirm.

I. BACKGROUND

The Department of Human Services (DHS) removed respondents' child in December 2012, after respondents were found to be living in a house that was unsafe for the child and both tested positive for opiates and methamphetamine. The initial service plan indicated several barriers to reunification for respondents, including (1) emotional health; (2) parenting skills; (3) substance abuse; (4) domestic relationships; (5) employment; and (6) housing. Both respondents made minimal progress with regard to the service plan during the first eight months of the proceedings. Thereafter, respondent mother went to jail and, while confined, completed some services and was able to maintain sobriety. Respondent father completed his psychological evaluation and four counseling sessions, but continued to miss drug screens and stopped attending counseling in November 2013. Neither parent completed a parenting class or substantially complied with the service plan. DHS eventually petitioned for termination of respondents' parental rights, and the trial court terminated respondents' parental rights in January 2013.

II. STATUTORY GROUNDS FOR TERMINATION

Both respondents argue that the trial court erred in finding statutory grounds to terminate their parental rights. We disagree. An appeal from an order terminating parental rights is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 357; 612 NW2d 407 (2000). "A finding of fact is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). "To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong . . . ." *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999) (quotation marks omitted).

MCL 712A.19b(3)(c)(*i*) states:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The principal conditions that led to adjudication were respondents' lack of adequate housing and drug use. The evidence established that, both respondents failed several drug tests, did not comply with mental health services, failed to obtain employment, and failed to establish a suitable residence. In fact, the former residence was condemned. Both respondents made modest progress on their parenting plan after the termination petition was filed. However, almost a year after the initial disposition, respondents continued to lack adequate housing and failed to demonstrate that they could live sober, stable lives despite the services offered by DHS. Additionally, neither had either adequate legal income from any source nor had either parent acquired greater parenting skills. In view of this evidence, the trial court did not clearly err in finding that statutory grounds for termination existed under MCL 712A.19b(3)(c)(*i*). See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012) (where respondents failed to demonstrate sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication, the trial court did not clearly err by terminating parental rights).

"Because one statutory ground for termination was established by clear and convincing evidence, we need not consider whether the other grounds cited by the trial court also supported the termination decision." *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

III. REASONABLE EFFORTS

Respondent father, under docket no. 320185, additionally argues that he would have completed services if DHS made reasonable efforts to help with the reunification process. We conclude otherwise. Because neither party made a formal objection to the reasonable efforts provided by DHS, this issue is unpreserved. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "In general, when a child is removed from the parents' custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a

service plan." *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Whether reasonable services were offered to respondents relates to the sufficiency of the evidence to establish the statutory grounds for termination. *Id.* at 541.

As stated by the trial court in determining that DHS expended reasonable efforts to reunify the family, respondent father was provided with "counseling, substance abuse services through Psychological Consultants, drug screens, Wraparound services for housing issues, [and] case management services through the Department of Human Services." Although respondent father now asserts that he did not have transportation and could not attend services, he also admitted during the termination hearing that he had the use of his mother's vehicle. Further, at the May 2013 dispositional hearing, counsel for both parents indicated that the respondents "now have a vehicle," which would make attending services "easier." Finally, the evidence of record indicates that the foster care caseworker provided respondent father with a single bus pass and personally offered respondents rides to parenting times if they were needed. The efforts to assist father with transportation were feeble but father's efforts to transport himself or request transport assistance were, also anemic. It is accurate, as respondent father argues, that the trial court admonished DHS for being late with submitting its reports for the termination hearing; however, this is not evidence that DHS failed to make reasonable efforts to reunify the family. It is clear from the record that DHS made reasonable efforts and there is no plain error with regard to this issue.

Under docket no. 320273 respondent mother also argues that she was not provided with reasonable efforts because no services were provided to her while she was in jail as required under *In re Mason*, 486 Mich 142, 164-165; 782 NW2d 747 (2010). After having reviewed the record, we disagree. In *In re Mason*, our Supreme Court found that the trial court's conclusion that "respondent could not care for his children within a reasonable time in the future was improperly rooted in circumstances and missing information directly attributable to respondent's lack of meaningful prior participation" because of his incarceration; and thus, termination of the incarcerated parent's rights under MCL 712A.19b(3)(c)(*i*) and MCL712A.19b(3)(g) was premature. *Id.* at 162-165 (quotation omitted).

This case is factually distinguishable from *In re Mason* in several respects. Here, respondent mother was given ample opportunity to participate in services before her time in jail. While in jail, respondent mother was able to participate with Psychological Consultants and complete her psychological evaluation and receive counseling. The foster care caseworker also visited respondent mother, and services were available to mother in jail. In fact, respondent mother actually participated in more services while she was in jail than she did before she was incarcerated. Most importantly, the trial court's decision to terminate respondent mother's parental rights was not rooted in circumstances stemming from her incarceration or lack of access to services. Thus, there is no plain error. See *In re Plump*, 294 Mich App 270, 272; 817 NW2d 119 (2011) (reasonable efforts were extended even where those efforts did not alleviate the conditions that led to the adjudication).

IV. BEST INTERESTS

Finally, both respondents assert that the trial court erred in making its best interest findings. "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In determining whether termination was in the child's best interests, the trial court stated it took into consideration relative placement, the opinions of experts before the court, the likelihood of the child being adopted, the child's age, the child's wishes, the child's relationship with extended relatives, any special needs, ethnic and cultural considerations, length of time in foster care, and all other relevant factors.

Respondent mother argues that it was not in her child's best interests to terminate her parental rights when a strong maternal bond existed. The trial court acknowledged that the child loved and was bonded with both of her parents yet, far more bonded to her mother. However, the bond between parent and child may be outweighed by the child's need for stability and permanency. *In re LE*, 278 Mich App 1, 29-30; 747 NW2d 883 (2008). The trial court noted the instability that respondent mother's drug abuse created. The court found that the child had learned "the cycle", as respondent mother termed it, of respondent mother getting better, then getting worse and that unfortunately, the child had firsthand knowledge of that particular process. The trial court also recognized the child's acknowledgement that her parents were not in a position to be able to care for her. In fact, both parents testified that they were not capable of caring for the child at the time of the termination hearing with having failed to obtain suitable housing or employment. Even considering the parent-child bond, it would be unsafe for the child to return to a condemned home. The child's current placement was stable and pre-adoptive and the minor child had improved in school performance and attendance since being removed from her parents' care.

Respondent father argues that the trial court erred in failing to articulate why it would be in the child's best interests to terminate his parental rights. We agree. The trial court's oral opinion after the termination hearing is silent of any ruling on best interests for respondent father. After speaking about respondent mother's drug abuse and how her case was not like *In re Mason*, *supra*, the trial court concluded,

> As a result, the Court finds as well that the best interest of the minor child does and is met by the termination of parental rights. The Court will in fact sign an order for the termination of parental rights in this particular case. I have before me that order; I am signing that.

Termination of parental rights may not be ordered unless the trial court has found both a statutory ground to terminate and that termination is in the child's best interests. MCL 712A.19b(5); MCR 3.977(F)(1). The trial court is required to either "state on the record or in writing its findings of fact". MCR 3.977(I). The court's statements above are insufficient to establish that termination of respondent father's parental rights were in the best interests of his child. We affirm the court's finding of a statutory basis, but accordingly remand for the trial court to articulate its best interests finding.

Docket no. 320185 is affirmed in part and remanded in part for proceedings consistent with this opinion. Docket no. 320273 is affirmed. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens